

UNDERWRITING BULLETIN

To: Florida Agents and WFG employees
From: Florida Underwriting Department
Date: August 12, 2010
Bulletin No: FL-10-5
Name: Tenant Improvements on Rental Property

Florida Statutes §713.10 has long provided that a construction lien for tenant improvements (other than in a rental mobile home park) could attach to the landlord's interest in the improved property if the improvements were made in accordance with an agreement between the tenant and landlord (ie the lease or verbal agreement contemplated tenant improvements), unless:

The lease expressly provides that the landlord's interest shall not be subject to liens for tenant improvements; and either

- a. The lease or a short form of the lease is recorded in the official records and references the limitation on liability; or
- b. A notice has been recorded in the official records stating that ALL of the leases on a parcel of land prohibit such liability, and the notice includes the "specific language contained in the various leases prohibiting such liability" and meets other requirements.

Because of the title headaches it created on refinancing or sale, most landlords were advised not to record the individual unit leases and instead utilize the blanket notice as to all leases if they wanted this protection.

The recent case of Everglades Electric Supply, inc. v. Paraiso Granite, 28 So. 3d 235 (Fla 4th DCA, 2010) held that a blanket notice did NOT prevent the attachment of liens to the landlord's interest where (a) not every lease on the property included the limitation language; or (b) all of the leases included the limitation language, but the language of some leases was phrased slightly differently than the "specific" language of the blanket notice.

In light of this case, when examining title to rental property, we can no longer rely on a recorded blanket notice to insure over open Notices of Commencement for tenant improvement.

It will now be necessary to either (a) terminate any open Notices of Commencement for tenant improvements; or (b) confirm that every lease on the property includes the exact limitation

language shown in the recorded blanket notice and that the notice otherwise meets the requirement of the statute.

The good news: The Real Property, Probate & Trust Law Section of the Florida Bar and FLTA are already working on a legislative cure to this problem.

NOTE: This Bulletin is intended for use by title issuing offices, title insurance agents and approved attorneys of WFG National Title Insurance Company and any reliance by any other person or entity is unauthorized. This bulletin is intended solely for the purpose of underwriting policies of WFG National Title Insurance Company.